

## **REMARKS**

In response to the Initial Office Action, Applicants respectfully request reconsideration and allowance of pending claims 1-33 and 63-82, including independent claims 1 and 63. As shown above, claim 3 has been amended to correct an editorial error.

In the Office Action, the Title was also objected to as not being descriptive of the claimed invention. In response, the Title of the disclosure has been amended as shown above, and Applicants believe that the amended Title is descriptive of the claimed invention.

Also in the Office Action, claims 2, 6, 7, 12, 21, 23, 24, 25, and 32 were provisionally rejected under 35 U.S.C. §101 for double patenting in view of commonly assigned co-pending application no. 10/721,834, specifically claims 1, 3, 5, 7, 15-17, 43, 49, and 52-54. However, Applicants respectfully submit that this rejection is improper. 35 U.S.C. § 101 prevents two patents from issuing on the same invention, meaning identical subject matter. MPEP § 804.II.A. A comparison of the presently rejected claims with those of the '834 application reveals that the claim scope differs in many aspects. As such, Applicants respectfully request that the provisional statutory double patenting rejection be withdrawn.

All of the claims were also rejected in view of U.S. Patent No. 4,960,477 issued to Mesek, either alone or in combination with another reference. However, as the Office Action correctly admits, Mesek fails to teach or disclose that each of the flaps, when in an unfolded state, extend beyond the width of the front portion, as required by both independent claims 1 and 63.

In order to somehow overcome this deficiency in the disclosure of Mesek, the Office Action states that it "would be obvious to one of ordinary skill in the art at the time the invention was made that the flaps extend beyond the width of the front portion since this structure offers no additional benefit over the prior art." See Office Action, Pg. 4, lines, 7-10.

However, Applicants respectfully disagree with this statement. First, in the embodiments where the flaps form the widest portion of the web, as shown in FIGS 7 and 14, the flaps can be easily located and folded using a stationary folding device. In

fact, due to the width of the flaps, it may not be necessary to score the web prior to folding the flaps, although score lines may be formed on the absorbent web where the flaps are to be folded if desired. Application, Paragraph 74. On the other hand, Mesek discloses the use of a complicated folding device shown in Figs. 10 and 11, such as a time registered cam. The presently claimed configuration eliminates the need for this device because the flaps can be easily folded using a stationary folding device.

Furthermore, when each of the flaps extend beyond the width of the front portion when unfolded, the middle portion can be larger relative to the front portion after folding, than if each of the flaps did not extend beyond the front portion. The result of a relatively larger middle portion enables the absorbent to provide greater leakage protection in the middle area, resulting in an improved absorbent article. The Office Action apparently does not recognize that this advantage allows the resulting folded middle area to be relatively larger than it would be if the flaps did not extend beyond the width of the front portion.

In addition, Applicants respectfully submit that it would not be obvious to modify Mesek to have each of the flaps, when in an unfolded state, extending beyond the width of the front portion, as suggested by the Office Action. No motivation, incentive, or suggestion exists within the disclosure of Mesek for such modification.

Plainly, the Examiner's only incentive or motivation for so modifying Mesek in the manner suggested in the Office Action results from using Appellants' disclosure as a blueprint to reconstruct the claimed invention, which is improper under 35 U.S.C. § 103. Accordingly, it is respectfully submitted that any such modification of the cited references relies on the impermissible use of hindsight, which cannot be successfully used to support a *prima facie* case of obviousness.

The Office Action also rejected many of the dependent claims in view of Mesek in combination with one or more secondary references. However, Applicants submit that those dependent claims are also patentable over Mesek, either alone or in combination with any of the cited references for at least the reasons explained above.

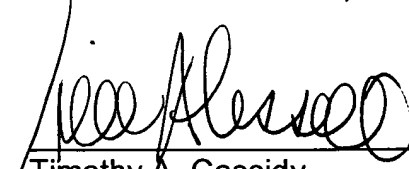
In summary, it is believed that the present application is in complete condition for allowance. However, should any questions or issues arise after consideration of this

response, Examiner Hill is invited and encouraged to telephone the undersigned at her convenience.

Please charge any additional fees required by this Amendment to Deposit Account No. 04-1403.

6/9/05  
Date

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